

AMENDED IN ASSEMBLY JUNE 17, 2010

AMENDED IN SENATE MARCH 25, 2010

**SENATE BILL**

**No. 928**

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**Introduced by Senator Simitian**

February 1, 2010

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~~An act to add Article 6 (commencing with Section 108670) to Chapter 5 of Part 3 of Division 104 of the Health and Safety Code, relating to~~  
*An act to add Article 10.10 (commencing with Section 25219.5) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to consumer product safety.*

LEGISLATIVE COUNSEL'S DIGEST

SB 928, as amended, Simitian. Consumer products: content information.

Existing law regulates the labeling and use of various consumer products, including toys and toxic household products.

*Existing law, administered by the Department of Toxic Substances Control, prohibits the management of hazardous waste, except in accordance with the hazardous waste laws or the regulations adopted by the department. A violation of these laws is a crime.*

~~The bill would require a manufacturer or wholesaler of a designated consumer product, as defined, on or before March 31, 2011, to provide a notice that lists all substances, identified by a number or other unique identifier, that are contained in that product, by posting that information on the manufacturer's or wholesaler's Internet Web site. A manufacturer or wholesaler that does not maintain an Internet Web site would be required by the bill to establish such an Internet Web site. The~~  
*This bill would prohibit the manufacture, sale, or distribution of a designated consumer product, as defined, unless the manufacturer discloses each*

*ingredient, as defined, contained in the product, identified in a prescribed manner, by posting that information on the manufacturer's Internet Web site, and provides the Web site and page address on the product label, along with a prescribed statement.*

*The bill would, under specified circumstances, allow nondisclosure of ingredients defined as trade secrets.*

*The bill would declare that its provisions are severable and if any provision of the bill is held invalid, that invalidity would not affect other provisions or applications that can be given effect without the invalid provision or application.*

*By creating a new crime, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. This act shall be known, and may be cited, as the*
- 2     *Consumer Right to Know Act.*
- 3     *SEC. 2. The Legislature finds and declares the following:*
- 4     *(a) There are currently more than 80,000 chemicals in*
- 5     *commerce listed on the United States Environmental Protection*
- 6     *Agency's inventory of chemicals under the federal Toxic Substance*
- 7     *Control Act.*
- 8     *(b) Each day a total of 42 billion pounds of chemical substances*
- 9     *are produced in, or imported in to, the United States for*
- 10    *commercial and industrial uses.*
- 11    *(c) According to a 1997 report published by the State Air*
- 12    *Resources Board there are more than 147,274,180 pounds of*
- 13    *general purpose cleaners sold in California each day.*
- 14    *(d) These substances come in direct contact with people in their*
- 15    *workplaces and in their homes.*
- 16    *(e) A 2009 biomonitoring report conducted by the federal*
- 17    *Centers for Disease Control and Prevention found in measurable*

1 *amounts 212 chemicals in the blood and urine of a representative*  
2 *sample of the California population.*

3 *(f) Current federal and state laws do not require manufacturers*  
4 *to disclose to consumers the ingredients contained in all cleaning*  
5 *products.*

6 *(g) According to the United States Environmental Protection*  
7 *Agency, nearly 20 percent of all chemicals in commerce in the*  
8 *United States are kept secret by manufacturers.*

9 *(h) There is a growing awareness and concern among*  
10 *consumers about the exposure to chemicals in their homes and*  
11 *workplaces and the lack of transparency about chemical content*  
12 *in the consumer products they purchase and use and the potential*  
13 *adverse health and environmental impacts caused by those*  
14 *products.*

15 *(i) It is, therefore, the intent of the Legislature in enacting the*  
16 *Consumer Right to Know Act to provide greater transparency to*  
17 *consumers about the ingredients of air care, automotive, cleaning,*  
18 *and polish and floor maintenance products in order to empower*  
19 *consumers to make informed decisions about the products they*  
20 *purchase and use.*

21 *SEC. 3. Article 10.10 (commencing with Section 25219.5) is*  
22 *added to Chapter 6.5 of Division 20 of the Health and Safety Code,*  
23 *to read:*

24  
25 *Article 10.10. Chemically Formulated Consumer Products*  
26

27 *25219.5. For purposes of this article, the following definitions*  
28 *shall apply:*

29 *(a) "Chemically formulated consumer product" means a*  
30 *consumer product that is manufactured from chemicals or chemical*  
31 *compounds to be used by household, institutional, commercial,*  
32 *and industrial consumers without further processing for specific*  
33 *purposes. For the purposes of this subdivision, dilution by the*  
34 *consumer is not considered further processing.*

35 *(b) "Consumer product" has the same meaning as that term is*  
36 *defined in subdivision (e) of Section 25251.*

37 *(c) "Department" means the Department of Toxic Substances*  
38 *Control.*

39 *(d) "Designated consumer product" means any product included*  
40 *in the following categories:*

1 (1) “Air care product” means a chemically formulated consumer  
2 product designed, or labeled to indicate that the purpose of the  
3 product is, for masking odors, or for freshening, cleaning, scenting,  
4 or deodorizing the air.

5 (2) “Automotive product” means a chemically formulated  
6 consumer product designed, or labeled to indicate that the purpose  
7 of the product is, to maintain the appearance of a motor vehicle,  
8 including products for washing, waxing, polishing, cleaning, or  
9 treating the exterior or interior surfaces of motor vehicles.

10 “Automotive product” does not include automotive paint or paint  
11 repair products.

12 (3) “Cleaning product” means a soap, detergent, or other  
13 chemically formulated consumer product designed, or labeled to  
14 indicate that the purpose of the product is, to clean or disinfect  
15 surfaces, including, but not limited to, floors, furniture,  
16 countertops, showers and baths, or other hard surfaces, such as  
17 stovetops, microwaves, and other appliances, fabric care, or dish  
18 or other ware washing.

19 (4) “Polish or floor maintenance product” means a chemically  
20 formulated consumer product, such as polish, wax, or a restorer,  
21 designed, or labeled to indicate that the purpose of the product is,  
22 to polish, protect, buff, condition, temporarily seal, or maintain  
23 furniture, floors, metal, leather, or other surfaces.

24 (e) “Hazardous substance” means a chemical, or chemical  
25 compound, including breakdown products, identified by a state or  
26 federal agency or other governmental body or the World Health  
27 Organization as potentially having properties of eye and skin  
28 irritation, sensitization, acute or chronic toxicity, carcinogenicity,  
29 cytotoxicity, neurotoxicity, developmental or reproductive toxicity,  
30 or both, endocrine disruption, or ecotoxicity.

31 (f) “Incidental ingredient” means a chemical that has no  
32 technical or functional effect on the designated consumer product.  
33 “Incidental ingredients” are any of the following:

34 (1) Substances that have no technical or functional effect in the  
35 product, but are present by reason of having been incorporated  
36 into the product in an amount not greater than 0.01 percent as an  
37 ingredient of another product.

38 (2) Processing aids. Processing aids are either of the following:

39 (A) Substances that are added to a designated consumer product  
40 during the processing of the designated consumer product, but are

1 removed from the product in accordance with good manufacturing  
2 practices before it is packaged in its finished form.

3 (B) Substances that are added to a designated consumer product  
4 during processing for their technical or functional effect in the  
5 processing, are converted to substances the same as constituents  
6 of declared ingredients, and do not significantly increase the  
7 concentration of those constituents.

8 (3) Incidental ingredients do not include substances that are  
9 produced as a result of the processing of the designated consumer  
10 product.

11 (g) “Ingredient” means a chemical in a designated consumer  
12 product. As used in this subdivision, ingredients may be substances  
13 or compounds. The term “ingredient” does not include incidental  
14 ingredients.

15 (h) “Manufacturer” means a person or entity that manufactures,  
16 assembles, produces, packages, repackages, or relabels a  
17 designated consumer product that is sold, distributed, or used in  
18 this state.

19 (i) “Trade secret” has the same meaning as that term is defined  
20 in subdivision (d) of Section 3426.1 of the Civil Code, except as  
21 provided by this subdivision.

22 (1) Any ingredient or incidental ingredient that is a hazardous  
23 substance shall not be considered a trade secret.

24 (2) Any designated consumer product or ingredient or incidental  
25 ingredient of a designated consumer product that can be reverse  
26 engineered shall not be considered a trade secret.

27 25219.6. Commencing July 1, 2011, no designated consumer  
28 product may be manufactured, sold, or otherwise distributed in  
29 this state unless the manufacturer discloses each ingredient  
30 contained in the product by posting the product ingredient  
31 information on the manufacturer’s Internet Web site and provides  
32 the Web site and page address on the label of the designated  
33 product along with a statement directing the consumer to the  
34 Internet Web site for information concerning ingredients contained  
35 in the product.

36 25219.7. (a) Ingredients in a designated consumer product  
37 shall be identified by the Chemical Abstract Service (CAS) number  
38 and either the Consumer Specialty Products Association Consumer  
39 Product Ingredients Dictionary (CSPA dictionary) name, if and  
40 when the dictionary is made accessible to the public, or the

1 *International Nomenclature Cosmetic Ingredient (INCI) name. If*  
2 *there is not a CSPA dictionary name or INCI name, then the*  
3 *ingredients in a designated consumer product shall be identified*  
4 *by the CAS number and the International Union of Pure and*  
5 *Applied Chemistry (IUPAC) name. If there is not an CSPA*  
6 *dictionary name, INCI name, or IUPAC name, then the product*  
7 *shall be identified by the CAS number and common chemical name.*

8 *(b) In identifying the ingredient name, the manufacturer shall*  
9 *also identify which of the nomenclature references were used for*  
10 *ingredient identification.*

11 *25219.8. In the event there is a substitution of an ingredient*  
12 *in a designated consumer product, the disclosure required by this*  
13 *article shall specify alternatives to any ingredients that may be*  
14 *affected. An alternative ingredient shall be declared either:*

15 *(a) Immediately following the normally used ingredient for*  
16 *which it substitutes, in which case it shall be identified as an*  
17 *alternative ingredient by the word “or” following the name of the*  
18 *normally used ingredient and any other alternative ingredient.*

19 *(b) Following the declaration of all normally used ingredients,*  
20 *in which case the alternative ingredients in the group so listed*  
21 *shall be identified as alternative ingredients by the phrase “may*  
22 *also contain.”*

23 *25219.9. For purposes of this article, a manufacturer shall not*  
24 *be required to disclose ingredients falling within the definition of*  
25 *trade secret, unless that information is otherwise required to be*  
26 *publicly disclosed under another law of this state, has been publicly*  
27 *disclosed by the manufacturer, or has been lawfully disclosed by*  
28 *a governmental entity. A manufacturer shall indicate the existence*  
29 *of trade secret information in the disclosure required under Section*  
30 *25219.6 by individually identifying trade secret protected chemicals*  
31 *and chemical compounding using a functional class descriptor*  
32 *name and stating that that ingredient is a trade secret.*

33 *25219.10. (a) Notwithstanding Section 6254.7 of the*  
34 *Government Code, if a manufacturer believes that disclosure of*  
35 *information pursuant to this section involves the release of a trade*  
36 *secret, the manufacturer shall make written disclosure to the*  
37 *department and substantiate in writing the basis of the trade secret.*  
38 *In its written notice, the manufacturer shall specify the information*  
39 *it is keeping confidential and provide to the department at the time*  
40 *of submission full justification and documentation in writing*

1 *supporting the trade secrecy claim, including specific explanation*  
2 *and documentation of all of the following:*

3 *(1) How the information derives independent economic value,*  
4 *actual or potential, from not being known to the general public.*

5 *(2) The ease or difficulty by which information could be properly*  
6 *acquired or duplicated if disclosure is made.*

7 *(3) How revealing the chemical identity would expressly reveal*  
8 *the process by which the chemical is made or the portion of a*  
9 *mixture the chemical comprises or the proprietary nature of the*  
10 *chemical itself.*

11 *(4) What efforts are taken by the manufacturer to maintain its*  
12 *secrecy.*

13 *(5) The barriers to reverse engineering of the relevant consumer*  
14 *product.*

15 *(6) The basis of the manufacturer's determination that the*  
16 *ingredient is not a hazardous substance.*

17 *(b) Subject to this section, the department shall protect from*  
18 *disclosure a trade secret designated as a trade secret by the*  
19 *manufacturer for a period of six years, if that trade secret is not*  
20 *a public record. After that period expires, the manufacturer may*  
21 *resubstantiate the need for trade secrecy protection.*

22 *(c) Upon either, receipt of a request for the release of*  
23 *information to the public that includes information that the*  
24 *manufacturer has notified the department is a trade secret and*  
25 *that is not a public record, or a determination by the department*  
26 *that information claimed as a trade secret is subject to public*  
27 *disclosure, both of the following procedures apply:*

28 *(1) The department shall notify the manufacturer that disclosed*  
29 *the information to the department of the request or determination,*  
30 *in writing by certified mail, return receipt requested.*

31 *(2) The department shall release the information to the public,*  
32 *but not earlier than 30 days after the date of mailing the notice of*  
33 *the request for information or determination, unless, prior to the*  
34 *expiration of the 30-day period, the manufacturer initiates an*  
35 *action in an appropriate court for a declaratory judgment that the*  
36 *information is subject to protection under this section or for a*  
37 *preliminary injunction prohibiting disclosure of the information*  
38 *to the public and promptly notifies the department of that action.*  
39 *In order to prevent the department from releasing the information*  
40 *to the public, the manufacturer shall obtain a declaratory judgment*

1 *or preliminary injunction within 30 days of filing an action for a*  
2 *declaratory judgment or preliminary injunction.*

3 *(d) This section does not authorize a manufacturer to refuse to*  
4 *disclose ingredient information to the department.*

5 *(e) Any information that a court, pursuant to this section,*  
6 *determines is a trade secret and not a public record, or pending*  
7 *final judgment pursuant to subdivision (c), shall not be disclosed*  
8 *by the state agency to anyone, except to an officer or employee of*  
9 *a city or county, the state, or the United States, or to a contractor*  
10 *with a city or county, or the state, and its employees, if, in the*  
11 *opinion of the state agency, disclosure is necessary and required*  
12 *for the satisfactory performance of a contract, for the performance*  
13 *of work, or to protect the health and safety of the employees of the*  
14 *contractor.*

15 *25219.11. The provisions of this article are severable. If any*  
16 *provision of this article or its application is held invalid, that*  
17 *invalidity shall not affect other provisions or applications that can*  
18 *be given effect without the invalid provision or application.*

19 *SEC. 4. No reimbursement is required by this act pursuant to*  
20 *Section 6 of Article XIII B of the California Constitution because*  
21 *the only costs that may be incurred by a local agency or school*  
22 *district will be incurred because this act creates a new crime or*  
23 *infraction, eliminates a crime or infraction, or changes the penalty*  
24 *for a crime or infraction, within the meaning of Section 17556 of*  
25 *the Government Code, or changes the definition of a crime within*  
26 *the meaning of Section 6 of Article XIII B of the California*  
27 *Constitution.*

28 ~~SECTION 1. Article 6 (commencing with Section 108670) is~~  
29 ~~added to Chapter 5 of Part 3 of Division 104 of the Health and~~  
30 ~~Safety Code, to read:~~

31  
32 ~~Article 6. Consumer Product Content Information~~  
33

34 ~~108670. The Legislature finds and declares all of the following:~~

35 ~~(a) The federal Consumer Product Safety Act (15 U.S.C. Sec.~~  
36 ~~2051 et seq.; the federal act) was enacted with the purpose of~~  
37 ~~protecting the public against unreasonable risks of injury associated~~  
38 ~~with consumer products, by assisting consumers in evaluating the~~  
39 ~~comparative safety of consumer products, and developing uniform~~  
40 ~~safety standards for those products.~~



1     (b) ~~The federal act generally defines the term “consumer~~  
2 ~~product” as a product produced or distributed for sale to a consumer~~  
3 ~~for use in or around a household, a school, in recreation, or~~  
4 ~~otherwise, but excludes certain items, including tobacco, motor~~  
5 ~~vehicles, pesticides, drugs, devices, or cosmetics, and food.~~

6     (e) ~~The state is aware of, and appreciates, the regulatory regime~~  
7 ~~established by the federal act, but the federal act does not fully~~  
8 ~~regulate the chemical-exposure risks posed by many consumer~~  
9 ~~products.~~

10    (d) ~~The federal act provides that if a consumer product safety~~  
11 ~~standard applies to a risk of injury associated with a consumer~~  
12 ~~product, a state is prohibited from establishing a safety standard~~  
13 ~~or regulation that deals with the same risk of injury associated with~~  
14 ~~that consumer product.~~

15    (e) ~~However, the federal act allows a state to impose safety~~  
16 ~~requirements that are more stringent than federal standards, if the~~  
17 ~~state standard is designed to protect against a risk of injury~~  
18 ~~associated with a consumer product and if the state standard~~  
19 ~~provides a higher degree of protection from that risk than the~~  
20 ~~federal standard.~~

21    (f) ~~The informational requirements of this article would impose~~  
22 ~~additional safety requirements that do not deal with the same risk~~  
23 ~~of injury for consumer products that is associated with existing~~  
24 ~~consumer product safety standards under the federal act or that are~~  
25 ~~more stringent than the federal standards and provide a higher~~  
26 ~~degree of protection from risk.~~

27    108671. ~~For purposes of this article, the following definitions~~  
28 ~~shall apply:~~

29    (a) ~~“Designated consumer product” means a product included~~  
30 ~~in the following categories:~~

31    (1) ~~“Air care product,” which means a chemically formulated~~  
32 ~~product designed to affect indoor air.~~

33    (2) ~~“Automotive product,” which means a chemically formulated~~  
34 ~~product designed to maintain the appearance of a motor vehicle.~~

35    (3) ~~“Cleaning product,” which means a soap, detergent, or other~~  
36 ~~chemically formulated product designed for personal hygiene,~~  
37 ~~fabrie care, dish or other ware washing, or surface cleaning.~~

38    (4) ~~“Polish or floor maintenance product,” which means a~~  
39 ~~chemically formulated product, including, but not limited to, a~~

1 polish, wax, or a restorer designed to polish, protect, or maintain  
2 furniture, floors, metal, leather, or other surfaces.

3 (b) ~~“Manufacturer” means a person who manufactures a~~  
4 ~~designated consumer product in this state.~~

5 (c) ~~“Wholesaler” means a person who purchases a designated~~  
6 ~~consumer product, for resale in this state, from a person who did~~  
7 ~~not manufacture the designated consumer product in this state.~~

8 108672. ~~On or before March 31, 2011, a manufacturer or~~  
9 ~~wholesaler of a designated consumer product shall provide a notice~~  
10 ~~that lists all substances, identified by a number or other unique~~  
11 ~~identifier, that are contained in that product.~~

12 108673. ~~(a) A manufacturer or wholesaler shall provide the~~  
13 ~~notice required by Section 108672 by posting the information on~~  
14 ~~the manufacturer’s or wholesaler’s Internet Web site.~~

15 (b) ~~A manufacturer or wholesaler subject to this section that~~  
16 ~~does not maintain an Internet Web site shall establish an Internet~~  
17 ~~Web site for purposes of compliance with this article.~~

18 108674. ~~The provisions of this article are severable. If any~~  
19 ~~provision of this article or its application is held invalid, that~~  
20 ~~invalidity shall not affect other provisions or applications that can~~  
21 ~~be given effect without the invalid provision or application.~~